IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

TUESDAY, THE 13TH MARCH 2007 / 22ND PHALGUNA 1928

Bail Appl..No. 1404 of 2007()

C.R. NO. 3 OF 2005 EXCISE CIRCLE OFFICE, THIRUVANANTHAPURAM

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PETITIONERS/ACCUSED NO.1 & 2

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1. THULASI, D/O. SUSEELA,
   HOUSE NO.31/468, KADAKAMPALLY VILLAGE,
   CHEKKAI DESOM, THIRUVANANTHAPURAM FROM
   ATTUPURAMPOKKU, NEAR MUTTATHARA VADUVATHUKOVIL,
   MUTTATHARA VILLAGE, THIRUVANANTHAPURAM TALUK.

2. VIKRAMAN @ PACHA VIKRAMAN,
   S/O. SAHADEVAN, HOUSE NO.31/468,
   ATTUVARAMBATHU, NEAR RAILWAY BRIDGE,
   CHAKKAI DESOM, KADAKAMPALLY VILLAGE,
   THIRUVANANTHAPURAM.

BY ADV. SRI.GEORGE MECHERIL

RESPONDENTS: COMPLAINANT

EXCISE CIRCLE INSPECTOR,
EXCISE CIRCLE OFFICE, THIRUVANANTHAPURAM,
THROUGH THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI.P.N. SUKUMARAN

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 13/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

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Bail Application NO. 1404 of 2007

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DATED: 13-03-2007

O R D E R

Petitioners who are accused Nos. 1 and 2 in C.R. No. 3 of 2005 of Excise Circle Office, Thiruvananthapuram for an offence punishable under Sec. 21(b) of the N.D.P.S. Act for allegedly having been found in possession of 7.200 grams of heroin on 22-3-2005 and who were arrested on 27-1-2007, seek their enlargement on bail.

2. On a reference by this Court, the Sessions Judge, Thiruvananthapuram as per letter dated 9-3-2007 has informed that on the receipt of the report of the Chemical Examiner the final report which has been filed is one for offences punishable under Sections 17 (a) and 21(a) of the N.D.P.S. Act and that as per the report of Chemical Examiner, narcotic drugs involved in this case are 6.041 grams of opium and 1.203 grams of heroin. If so, going by the notification dated 19-10-2001 published as S.O. 1055 E dt. 19-10-2001 both the narcotic drugs are within the small quantity and the offences are, therefore, not triable by the Special Court but are triable only by the concerned Magistrate.

It appears that inadvertently, the case was taken on file as S.C. 614/06 before the Sessions Court, Thiruvananthapuram and made over to the Addl. Sessions court, (Fast Track IV), Thiruvananthapuram. Since the offences are triable by the Magistrate Court and are not exclusively triable by the court of Sessions, the Additional Sessions Court will have to transfer the case to the Chief Judicial Magistrate or such other Magistrate under Sec. 228 (1) (a) Cr.P.C. instead of framing charge and proceeding to try the case.

3. Considering the fact that both the offences are bailable offences, there is no justification in prolonging the judicial custody of the petitioners. The petitioners are, accordingly, directed to be released on bail on each of them executing a bond for Rs. 25,000/- (Rupees twenty five thousand only) with two solvent sureties each for the like amount to the satisfaction of the Sessions Court or Additional Sessions Court (Fast Track IV), Thiruvananthapuram and subject to the following conditions:

1. The petitioners shall not influence or intimidate the prosecution witnesses nor shall they attempt to tamper with the evidence for the prosecution.

2. The petitioners shall not commit any offence while on bail.

If the petitioners commit breach of any of the above conditions, the bail granted to them shall be liable to be cancelled.

This application is allowed as above.

V.RAMKUMAR, JUDGE.

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